

FISCAL NOTE

HB 2648 - SB 2731

January 21, 2008

SUMMARY OF BILL: Requires the Department of Human Services (DHS) to implement a program of substance abuse testing as a condition for public assistance eligibility if such testing is not prohibited by federal law or waiver.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact – The Bureau of TennCare and the Department of Human Services state that federal regulations prohibit programs which provide public assistance to use substance abuse testing as a condition of eligibility. As a result, there will not be an impact on expenditures of state or federal funds.

Assumptions:

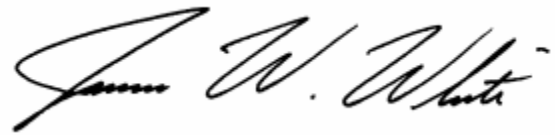
- The Bureau of TennCare will not incur any fiscal impact. The Center for Medicare and Medicaid Services (CMS) states that denial or termination of Medicaid benefits for failure to pass a drug test is not allowable under federal law.
- According to the Department of Human Services (DHS), federal law specifically prohibits the State from imposing other standards of eligibility for participation in the Food Stamp program.
- DHS assumes that the Temporary Assistance for Needy Families (TANF) program would also be excluded from the provisions of the proposed legislation due to the prohibition of federal law.
- On June 1, 2007, the Attorney General issued Opinion No. 07-84 regarding the constitutionality of Senate Bill 102 of 2007 which is identical to this bill and states:

“Title XIX of the Social Security Act, the TennCare waiver, and federal Food Stamp eligibility standards do not permit a state to condition eligibility on substance abuse testing. In addition, suspicionless drug testing of applicants for public assistance benefits has been held to be an unconstitutional search and seizure under the Fourth Amendment of the United States Constitution. Therefore, the program of substance abuse testing proposed by Senate Bill 102 could not be applied to TennCare or the Food Stamp program at all and could only be applied to any other public assistance programs to the extent

that it could be read to require substance abuse testing based on individualized suspicion in a program which permits such testing.”

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is written in a cursive style with a large, stylized "J" and "W".

James W. White, Executive Director

/kml